

Lawyer Well-Being: Prescribing sleep (Part 2)

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Second of two parts

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Matthew Walker's book, *Why We Sleep*, exposes our collective ignorance of the importance of sleep to our health and well-being. I used to believe that getting six hours of sleep per night on the weekdays was a big victory. I thought I could catch up on my sleep on the weekends. According to the neuroscience, this is wrong. If you are regularly getting less than seven hours of sleep per night, you are hurting yourself as severely as if you regularly smoked or drank to excess. (Yikes!) What's more, your brain does not work like a bank. The brain can never recover the sleep it has missed. (id. at 63-64)



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This is the second of two articles on the subject of sleep and lawyer well-being. The first article explores why we sleep and the startling results of not getting enough of it. This second article dives back into the subject of short sleeping and its impact on mental and physical health—including the impact of caffeine, alcohol, and LED devices on sleep. After introducing some tips for inducing sleep, I make the case for updating the recommendations of the ABA and National Task Force on Lawyer Well-Being to include “prescribing sleep.”

Short sleeping and lawyer well-being

One of the most important functions of client service is to learn the law and facts of a case. Short sleeping, however, blocks the ability to learn. If we don't sleep enough the very first night after learning, we lose the chance to consolidate those memories, even if we get lots of catch-up sleep later. (id. at 157) Those few memories we are able to learn while sleep deprived are forgotten far more quickly. (id. at 154-55)

Cool, rational thinking and self-composure are hallmarks of good lawyering. Lack of sleep creates emotional irrationality the next day. The under-slept brain swings excessively to both extremes of emotional valence, positive and negative. (id. at 215-17) Without sufficient sleep, we cannot correctly discern the emotions of others. (id.) We fall back on our inherent bias of fear in interacting with others. (id.) This impacts social interactions necessary for client service, team-building, advocacy, leadership, and diversity and inclusion.

Most of us travel to visit clients and attend court hearings, not to mention bringing our kids to school. Vehicular accidents caused by drowsy driving exceed those cause by alcohol and drugs combined. (id. at 5) Sleep deprivation slows your reaction time and *makes you stop responding all together*. (id. at 140) That's why drowsy driving is worse than driving drunk. (id.)

Our work schedules favor “morning larks” and hurt “night owls.” Every human being has a genetically determined 24-hour circadian rhythm. (id. at 14). For some, the peak of wakefulness arrives early in the day and their sleepiness trough arrives early at night. (id. at 20-21) “Morning larks” comprise about 40 percent of the population. (id.) “Night owls” comprise 30 percent of the population. (id.) Society's work scheduling is strongly biased toward early start times that hurt owls and favor larks. (id.) Job performance of owls is far less optimal in the mornings and they are prevented from expressing their true performance potential during the work day. (id.) Owls are more chronically sleep deprived and suffer higher rates of depression, anxiety, diabetes, cancer, heart attack, and stroke. (id.)

Caffeine blocks the sleepiness signal normally communicated to the brain by adenosine. (id. at 28) It takes a long time for the body to remove caffeine from your system so that you can go to sleep. Caffeine has a half-life of 5 to 7 hours. (id.) This means that if we have a cup of coffee after dinner, at 7:30 p.m., 50 percent of that caffeine may still be active at 1:30 a.m., meaning we will not be able to fall asleep easily. (id.)

Alcohol disrupts sleep. It may sedate us out of wakefulness, but it does not induce natural sleep. (id. at 271) Alcohol is one of the most powerful suppressors of REM sleep. (id. at 272) People consuming even moderate amounts of alcohol in the afternoon or evening are depriving themselves of REM sleep and its benefits. (id. at 272-75)

LED lights disrupt our sleep. Artificial evening light tricks us into believing night is day and winds back our internal 24-hour clock by two to three hours, on average. (id. at 267) Evening exposure to blue LED light is even worse. Using LED devices at night such as iPads, phones, and computers disrupts our natural sleep rhythms and hurts the quality and quantity of our sleep. (id. at 268-70)

Sleep disruption contributes to all major psychiatric conditions, including depression, anxiety, and suicidality. (id. at 3) It is not just that mental disorders cause sleep disruption—it is a two-way street. (id. at 149-52) Otherwise healthy people can experience a neurological pattern of brain activity similar to that observed in many of these psychiatric conditions simply by having their sleep disrupted or blocked. (id. at 149)

Further, sleep disturbance is a recognized hallmark associated with addictive substance abuse. (id.) Insufficient sleep also determines relapse rates in numerous addiction disorders. (id.)

Sleep strategies

Walker describes a number of sleep strategies to enhance your ability to get sufficient sleep. Here is a partial list:

- Stick to a sleep schedule and go to bed and wake up at the same time each day.
- Try to exercise no later than two to three hours before your bedtime.
- Avoid caffeine and nicotine.
- Avoid alcoholic drinks before bed because this will rob you of REM sleep and make you frequently wake up in the middle of the night.
- Avoid large meals and beverages late at night, which can interfere with sleep.
- If possible, avoid medications that delay or disrupt sleep.
- Don't take naps after 3:00 p.m. because it makes it harder to fall asleep at night.
- Sleep in a dark, cool, gadget-free bedroom.

(id. at 341-42)

Naps

Walker also provides information about how to use your knowledge of NREM and REM sleep cycles to enhance your learning, creativity, and performance. One such strategy is the nap. The learning capacity of the human brain declines with continued time awake across the day. We are genetically hardwired for biphasic sleep, with a dip in alertness in the midafternoon hours. (id. at 69) A nap as short as twenty minutes can offer a memory consolidation advantage, so long as it contains enough NREM sleep. (id. at 115) Note that a nap does not allow an individual to forgo sufficient sleep night after night. (id. at 144)

Prescribing sleep

In August 2017, the National Task Force on Lawyer Well-Being warned that “the current state of lawyers’ health cannot support a profession dedicated to client service and

dependent on the public trust.” Sleep “is the most glaring omission in the contemporary health conversation.” (Walker, *id.* at 8) It is also missing from the lawyer well-being conversation.

Our legal culture seems decidedly “anti-sleep.” We financially and psychologically reward people for working hard, putting in long hours, and putting the client first at the expense of our health and well-being. This impacts lawyer competence and civility in the profession. Walker demonstrates that there is a reciprocal relationship between sleep and mental and physical health. He also demonstrates the relationship between alcohol consumption and sleep. Walker’s book debunks the myth that long waking hours with little sleep are useful in effectively, safely, profitably, and ethically accomplishing the goals of business, education, medicine, and healthcare. (*id.* at 11). Our nation’s work places undermine and devalue sleep, leading to significantly lower productivity and motivation, more impulsive and unethical behavior, and staggering fiscal costs to businesses and national economies. (*id.* at 296-305)

Right now, we are mobilizing in Minnesota and across the country to implement the recommendations from the ABA and the National Task Force on Lawyer Well-Being. The neuroscience literature demonstrates that adequate sleep is a necessary condition for success. Getting sufficient sleep is critical for creating a well-being breakthrough for us individually and the legal profession.

Sleep is good for our health, our work performance, and our clients. The National Task Force Report’s recommendations could be strengthened by prescribing sleep. But we don’t have to wait for an updated report. We can get informed and prescribe sleep for ourselves. Right now.